

COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE
KENT COUNTY COURTHOUSE
DOVER, DELAWARE 19901
PHONE: (302) 739-4618

CHARLES W. WELCH, III
JUDGE

May 4, 2010

Mr. John Barkley
112 Summer Drive
Smyrna, DE 19977

RE: Credit Acceptance Corp. v. John Barkley
C.A. No.: CPU5-10-000273

Decision on Defendant's Motion to Vacate Default Judgment

Dear Mr. Barkley:

Our court is in receipt of your letter, filed with the Court on April 27, 2010, concerning the above-referenced matter. I consider your letter to be a motion to vacate the default judgment that has been entered against you in this matter.

A review of court records indicates that default judgment was entered against you on April 23, 2010, for failure to file a timely Answer to Credit Acceptance Corporation's Complaint, pursuant to Court of Common Pleas Civil Rule 12(a).

Once a default judgment has been ordered, a party must file a motion to vacate the default judgment in order to reopen the case. A party moving to vacate a default judgment under Court of Common Pleas Civil Rule 60(b) must satisfy three elements before the motion will be granted: "(1) excusable neglect in the conduct that allowed the default judgment to be taken; (2) a meritorious defense to the action that would allow a different outcome to the litigation if the matter was heard on the merits; and (3) a showing that substantial prejudice will not be suffered by the plaintiff if the motion is granted." *Perry v. Wilson*, 2009 WL 1964787, at *1 (Del. Super.) (quoting *Verizon Delaware, Inc. v. Baldwin Line Constr. Co.*, 2004 WL 838610, at *1 (Del. Super.)).

The Court will only consider the second two elements if the defendant has provided a satisfactory explanation that the failure to answer the Complaint was due to excusable neglect. *Id.* "Excusable neglect" is defined as "that neglect which might have been the act of a reasonably prudent person under the circumstances." *Id.* A defendant's failure to understand the Complaint or how to respond does not constitute excusable neglect. *Id.*

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If the Court is satisfied that the defendant has failed to answer the Complaint by excusable neglect, the other elements will be considered. The second element in a motion to vacate a default judgment requires a defendant to show how reopening the case could result in a different outcome based on the merits of the case. Keep in mind that while an allegation that a vehicle was defective may be a meritorious defense against a car dealer, it is not a meritorious defense against a separate and independent company that may have financed the vehicle. Only an explanation of why the defendant does not owe money to the plaintiff finance company can be considered a meritorious defense.

Finally, the third element of a motion to vacate a default judgment requires the defendant to explain why the plaintiff will not suffer substantial prejudice if the case is reopened. A plaintiff's requirement to answer the motion and argue its case on the merits, despite its belief that the case had been resolved, does not constitute substantial prejudice. *Old Guard Ins. v. Jimmy's Grille*, 2004 WL 2154286, at *3 (Del.).

In this case, the Court is not satisfied that you failed to file a timely Answer to the Complaint due to excusable neglect. Other than to allege a defense against Car Zone, you have provided no explanation as to why you did not file a timely Answer to Plaintiff's Complaint. Furthermore, although the allegation that the car you purchased had a faulty transmission could be a viable defense against Car Zone, you have failed to show how reopening this case could result in a different outcome against Credit Acceptance Corp. Therefore, your motion to vacate the default judgment is denied.

IT IS SO ORDERED.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW:mek
pc: Charles S. Knothe, Esq.